IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

Crl.L.P..No. 460 of 2007()

CC.4/2005 of J.F.C.M-IV (PRL.M.C.),NEYYATTINKARA

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PETITIONER/COMPLAINANT:

JOHNY, AGED 32, S/O. ESAKKEL,
KARIMOUVILA MANNADI VEEDU, VAZHUTHOOR,
NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS: ACCUSED AND STATE

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1. ANILKUMAR, AGED 31,
S/O CHELLAPPAN NADAR, ANIL BHAVAN,
VAZHUTHOOR, NEYYATTINKARA,
THIRUVANANTHAPURAM.

2. STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2-BY P.P.SRI.C.M. KAMMAPPU

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.460 OF 2007

Dated this the 12th day of July, 2007.

O R D E R

This is an application for special leave to appeal against the order passed in C.C.No.4/2005 on the file of the Judicial Magistrate of First Class-IV, Neyyattinkara. As per the complaint filed before the court, the 1st respondent/accused had borrowed an amount of Rs.1,81,300/= from the petitioner and in discharge of the said amount the 1st respondent had given Ext.P1 cheque for that amount. When the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund with the account of the 1st respondent. Hence, the complaint has been filed before the court.

2. To prove the case against the 1st respondent, the petitioner himself was examined as PW1 and produced Exts.P1 to P6. Though no evidence has been adduced on behalf of the 1st respondent, it was suggested to the petitioner when he was cross examined that there was no transaction as such revealed from the complaint. The trial court after considering the evidence found that the petitioner was not having any specific case or consistent case as he had stated in

the evidence that the 1st respondent had borrowed an amount of Rs.50,000/= only but he had a further case that the 1st respondent had borrowed an amount of Rs.2,61,300/=. When the petitioner was re-examined, he has further clarified that the amount borrowed by the 1st respondent was Rs.1,81,300/=. On considering the entire evidence, the trial court found that the petitioner miserably failed to prove the true case before the court and he had no consistent case. If so, it is the duty of the petitioner to prove that Ext.P1 is issued in discharge of a legally enforcible debt. Even if the evidence of PW1 is concerned and in the light of the writings in Ext.P1 cheque, it is to be noted that the amount he had given to the 1st respondent is only Rs.50,000/= and he had turned to this amount to Rs. 2,61,300/= and further turned to Rs.1,81,300/=.

In the above circumstances, the trial court rightly found that the petitioner failed to prove that the cheque in question was issued in discharge of a legally enforcible debt. Accordingly, the judgment of the trial court requires no interference by this Court. The application for leave to appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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